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December 29, 2011

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Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

231590

Re: Docket No. AB-33 (Sub-No. 277X), *Union Pacific Railroad Company --  
Abandonment Exemption -- in Lafourche Parish, LA*

Dear Ms. Brown:

This is to notify the Board that Valentine, LLC (Valentine) does not intend to file an Offer of Financial Assistance (OFA) to purchase the rail line that is the subject of the above proceeding.

Based on the content of letters to the Board filed by BNSF Railway Company (BNSF) dated December 6, 2011 and by Union Pacific Railroad Company (UP) dated December 23, 2011, the Notice of Exemption (NOE) filed by UP for abandonment of the rail line should be rejected or, at most, the Board should grant an exemption to UP for the lesser-included remedy of discontinuance of service over the rail line, instead of abandonment. In view of either of those appropriate Board actions, an OFA for purchase of the rail line would not be required because UP would continue to own the rail line, which would remain intact.

The formal expression of intent to file an OFA filed by Valentine in this proceeding was sent prior to receipt of the letters filed by BNSF and UP. The letter filed by BNSF provides compelling evidence, not disputed by UP, that BNSF has Board authority to operate over the rail line.

It is settled law that a rail carrier who owns a rail line cannot lawfully abandon the line where another rail carrier would continue to be authorized to operate over the line. *See, e.g., Thompson v. Texas Mexican Ry. Co.*, 328 U.S. 134, 144-145 (1946).

Here, UP seeks abandonment authority as to a rail line over which BNSF has Board authority to operate. The appropriate Board action in that circumstance is to reject the NOE for abandonment, or to grant discontinuance authority to UP in lieu of abandonment authority in light of BNSF's continuing authority from the Board to operate over the rail line. *See Illinois*

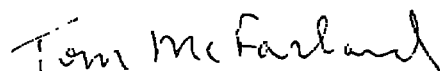
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*Central Gulf R. Co. - Abandonment*, 360 I.C.C. 104 (1978), where the Board's predecessor said (at 105):

The Administrative Law Judge conditioned abandonment authority upon attainment of Commission approval for discontinuance of the Illinois Terminal Railroad Company (IT) trackage rights operation over the line . . . We will modify the initial decision to allow the ICG to discontinue its own operations over the line while awaiting fulfillment of the condition respecting operations of the IT . . .

WHEREFORE, UP's NOE should be rejected, or the relief granted should be restricted to discontinuance of UP's rail service over the line.

Respectfully submitted,



Thomas F. McFarland  
*Attorney for Valentine LLC*

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